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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,525	09/29/2000	Ronald W. Barrett	019282-000210US	1576
7590	03/07/2005		EXAMINER	
TOWNSEND and TOWNSEND and CREW LLP 8th Floor Two Embarcadero Center San Francisco, CA 94111-3834			LEFFERS JR, GERALD G	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/675,525	BARRETT ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Gerald G Leffers Jr., PhD	1636

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 03 January 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: please see the Advisory Action Attachment. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): please see the Advisory Action Attachment.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 23-25 and 34.

Claim(s) rejected: 1-3, 5-9, 11, 12, 22, 26-33, 35-38, 40-42, 44-50, 54 and 127.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see the Advisory Action Attachment.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13.  Other: \_\_\_\_\_.

  
**GERRY LEFFERS**  
**PRIMARY EXAMINER**

Gerald G Leffers Jr., PhD  
 Primary Examiner  
 Art Unit: 1636

***Advisory Action Attachment***

**Continuation of 2. NOTE:** The proposed amendment will not be entered because: entry of the amendment would raise new issues upon rejoinder of nonelected claims. Entry of the amendment would overcome the outstanding grounds of rejection for the broad linking claims drawn to products, but additional considerations would then arise upon rejoining of the withdrawn claims that are linked by the amended linking claims and/or the methods claims that are dependent on the elected product claims (e.g. claim 108 not further limiting claim 107; 112 2<sup>nd</sup> paragraph rejections such as one for claim 109 regarding the metes and bounds of whether or not the term "further comprising" means an additional step must be performed or simply that the provided bacteriophage are generated using a particular method). Prosecution in this application was closed as of the Final Office Action mailed on 9/29/2004. The amendments proposed in the After-Final response filed 2/24/2005 could have been made prior to the Final Office Action, but were not. Therefore, the proposed amendment has not been entered .

**Continuation of 3:** Applicants' reply has overcome the following rejection(s): the 112 2nd paragraph rejection made against the phrase "a heterologous nucleic acid tag that can be decoded to identify a characteristic of the compound" is withdrawn. Upon further consideration of the instant specification, and in view of applicants' arguments presented in the response of 2/24/2005, the grounds of rejection made in the previous office action against this phrase are untenable. The cited phrase is merely very broad and is not indefinite.

**Continuation of 11:** The response filed 2/24/2005 does NOT place the application in condition for allowance because: arguments directed to the unentered amendment are moot since the amendment has not been entered. If the amendment had been entered, outstanding grounds of rejection for claims 1 and 127 over the prior art would have been overcome. Claim 45 and dependent claims would still be rejected for reasons of record, however, because the limitations of claim 34 have not been incorporated therein. It is noted for the record that the examiner suggested incorporation of the limitations of claim 34 in to claims 1, 127 and 45 (e.g. page 10 of the Final office action mailed 9/29/2004). Also, if the amendment had been entered, rejection of claims 40-42 & 44 under 35 U.S.C. 112 2<sup>nd</sup> paragraph for being dependent on a cancelled claim would have been overcome.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr., PhD whose telephone number is (571) 272-0772. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**GERRY LEFFERS**  
**PRIMARY EXAMINER**

Gerald G Leffers Jr., PhD  
Primary Examiner  
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